

State Notes

TOPICS OF LEGISLATIVE INTEREST

July/August 2007



Judicial Resource Recommendations 2007 **By Stephanie Yu, Fiscal Analyst**

On August 1, 2007, the State Court Administrative Office (SCAO) submitted its biennial report on judicial resources to the Legislature. Article VI, Section 3 of the State Constitution requires the Supreme Court to appoint “an administrator of the courts”, who must perform administrative duties assigned by the court.

In addition, Section 8171 of the Revised Judicature Act states:

The supreme court may make recommendations to the legislature in regard to changes in the number of judges, the creation, alteration and discontinuance of districts based on changes in judicial activity.

Therefore, in keeping with its constitutional and statutory responsibilities, the SCAO issues a biennial set of recommendations for changes in the number of judgeships. The report assesses current judicial staffing and determines which courts have excess judges, and which courts may need additional judges. The 2007 recommendation also addresses Court of Appeals judges, for the first time since 1994. Due to current budgetary considerations, the recommendation does not suggest adding judgeships, but focuses on those areas where judges could be eliminated, according to the SCAO analysis. The State Constitution imposes the requirement that each probate district have at least one probate judge, and each circuit at least one circuit judgeship, which limits the scope of the recommendations. The report recommends the elimination through attrition of 10 trial court judges and four Court of Appeals judges. Table 1 shows the trial court judgeships recommended for elimination.

Table 1

Trial Court Judgeships Recommendations By State Court Administrative Office		
Jurisdiction	County	# of Judgeships Eliminated
3 rd Circuit	Wayne	2
25 th Circuit	Marquette	1
36 th District	Wayne	1
70 th District	Saginaw	1
81 st District	Alcona, Arenac, Iosco & Oscoda	1
95A District	Menominee	1
95B District	Dickinson & Iron	1
97 th District	Baraga, Houghton & Keewenaw	1
98 th District	Gogebic & Ontonagon	1

Source: 2007 Judicial Resources Recommendations

The Court of Appeals is divided into four districts, and the recommendation would eliminate four judges. The SCAO cites the decrease in appellate filings, from a high of 13,352 in 1992 to under 8,000 in 2006, as a major reason for the recommendation. The report states that budgetary constraints have led to a decrease in staff, which in turn has shifted more of the



preparatory work to the judges. Therefore, by eliminating judges and restoring staff, the Court of Appeals would use its resources more effectively, according to the SCAO.

Fiscal Impact

The SCAO estimates yearly savings of \$1,567,368 for the State if all of the trial court recommendations were implemented. For each circuit or probate judgeship eliminated, the State would save \$157,987. For each district judgeship, the savings to the State would be \$156,201. Savings to local units would vary depending on their costs for benefits and resources, but could be substantial.

For each Court of Appeals judgeship, the State would save \$183,853 per year, for a total of \$735,412. In addition, according to the SCAO, eliminating those judgeships also would eliminate four law clerks and four judicial assistants, for additional savings of \$698,680. However, the SCAO report recommends using \$770,000 of the savings to hire 11.0 additional research attorneys at \$70,000 per attorney per year. Based on the SCAO recommendations, the Court of Appeals would realize \$664,088 in savings.

If all of the recommendations in the report were implemented, total annual savings would be approximately \$2,231,456. However, the additional recommendation to eliminate these judgeships through attrition means that the full savings would not necessarily be realized for many years. The 28 Court of Appeals judges have terms ending January 1 of 2009, 2011, or 2013. The trial court judgeships have varying terms as well, and age is the only limit on seeking re-election. According to the Michigan Constitution, judges must be less than 70 years of age at the time of election or appointment. In the 3rd and 25th Circuits, there are judges who cannot seek re-election due to age, but the time frame for the other districts could vary considerably. At the earliest, the State could realize some savings from these changes in fiscal year (FY) 2008-09, but the total savings likely would not be realized for many more years.

History

Trial Courts

The SCAO issues judicial resource recommendations (JRR) every two years. In 2005, the JRR advocated the elimination of one circuit judgeship, two district judgeships, and one probate judgeship, as well as the addition of six circuit judgeships. Of those recommendations, four circuit judgeships were ultimately added, and no judgeships were eliminated. Circuit judgeships were added in the following places: Macomb County (16th Circuit), Kent County (17th Circuit), Mecosta/Osceola Counties (49th Circuit), and Clare/Gladwin Counties (55th Circuit). The total cost to the State per year amounts to approximately \$630,000. The Legislature approved additional circuit judgeships for Oakland County (6th Circuit) and Genesee County (7th Circuit) but they were not implemented at the local level. Due to the costs to the local unit, the law requires adoption of a local resolution to add judgeships. Genesee County did not approve a resolution, and Oakland County approved one effective January 1, 2009. The 2003 JRR proposed the elimination of four district judgeships and one circuit judgeship, and the addition of three circuit judgeships. None of these changes were implemented. In fact, recommendations for the elimination of judgeships have not been implemented since the 2001 JRR.



Of the 10 trial court judgeships recommended for elimination in 2007, only two had been recommended for elimination in 2005, in the 70th District (Saginaw) and the 3rd Circuit (Wayne), although the recommendation for Wayne County changed from a probate judgeship to a circuit judgeship. The 2005 report showed a need for an additional judgeship in the 36th District, while the 2007 report supports the elimination of a judgeship. Both reports cite decreasing caseloads and population, as well as funding difficulties. However, the 2007 JRR also recommends that the savings from eliminating a judgeship be used to alleviate a staffing shortage in the 36th District; therefore, the resulting savings for the local unit could be less than anticipated. The remaining districts recommended for reductions in 2007 were not included in the 2005 extended analysis.

Court of Appeals

Judicial resources in the Court of Appeals have not been assessed since the 1994 report, which had a different methodology than the current one. At that time, the SCAO recommended that the Court of Appeals be expanded by 12 judges, from 28 to 40 as of 1997. This recommendation stemmed from a significant increase in both criminal and civil filings. While the methodology in place at that time emphasized caseload over other factors, such a large increase represented a significant need. The number of Court of Appeals judges was last adjusted in 1995, with an increase of four judgeships, from 24 to the current 28. That increase was anticipated in the 1994 JRR. For many years, the Court of Appeals made use of visiting judges to alleviate the workload for the Court of Appeal judges. The number of visiting judges reached a high of 11.73 in 1996. Since 2004, visiting judges have not been used.

Response to the 2007 JRR

Supreme Court

The response to the 2007 report has been extremely varied and heated. Within the Supreme Court itself, four of the seven justices voted to release the report to the Legislature, while the remaining three justices voted against its release. Those three justices, Justices Weaver, Cavanagh and Kelly, offered memoranda dissenting from the recommendation of the majority. The justices raised questions about the report's methodology and objectivity. Justice Weaver further argued that the time line for the release of the report was compressed and did not allow sufficient time for the justices to review the recommendations. In a separate statement concurring with the report, Justice Young stated that the methodology is the same as has been used since the 2003 report, and that budgetary constraints must be addressed. Justice Young also pointed out that the idea to reduce the number of Court of Appeals judges is not new, as it was discussed at a judges' conference in 2005. Additionally, Chief Justice Taylor had sent a letter in April to Governor Granholm, requesting that she delay the appointment of new judges until the report was issued.

Court of Appeals

The Chief Judge of the Court of Appeals, Judge Whitbeck, has come out strongly against the proposed reductions in the Court of Appeals. Judge Whitbeck has publicly asked whether the Michigan Constitution allows the Legislature to reduce the number of Court of Appeals judges.



Article 6, Section 8 of the Constitution states, "The number of judges comprising the court of appeals may be increased, and the districts from which they are elected may be changed by law." Given the wording of the Constitution, Judge Whitbeck has questioned whether a decrease in the number of judges is allowable. Judge Whitbeck also has questioned the analysis that led to the proposed reductions. In a public position statement, Judge Whitbeck has argued that while filings are down, the workload per judge has been increasing, due to less reliance on visiting judges. Both dispositions and filings per judge have increased since 2001, from 267.3 dispositions and 249.6 filings per judge in 2001, to 295.6 dispositions and 284.0 filings per judge in 2006. Judge Whitbeck also has argued that research attorneys should not be considered sufficient substitutes for judges. Research attorneys are divided into two categories: pre-hearing attorneys and senior research attorneys. The cost per attorney cited in the SCAO report of \$70,000 would be the cost for pre-hearing attorneys who, as a rule, are relatively inexperienced. According to Judge Whitbeck, the more complex cases that the judges handle could not reasonably be shifted to pre-hearing attorneys. The average annual cost for a senior research attorney, including benefits, is \$114,000.

Delay Reduction

Since 2001, the Court of Appeals has been working to reduce the amount of time it takes to dispose of cases. In 2001, the average time to decide a case was 653 days. By 2006, that number had dropped to 423 days, a decrease of 35.0%. According to Judge Whitbeck, any improvements made in processing time may be lost if the number of judges is reduced. The SCAO report contends that because the Court of Appeals is currently processing more cases each year than there are new filings, the potential for further delay reduction is limited. The impact of a reduction in judgeships on this program is uncertain.

Conclusion

The 2007 Judicial Resource Recommendations have sparked controversy, particularly within the Supreme Court and the Court of Appeals. There are often negative reactions to the elimination of judgeships in a given area; however, the recommendation to reduce the number of judges on the Court of Appeals has drawn additional debate. The report recommends the elimination of 10 trial court judgeships by attrition, which would eventually save the state approximately \$1.6 million annually. Any savings would not occur until FY 2008-09 at the earliest; however, the total savings would not necessarily be realized for many years. The number of trial court judgeships in any area is set in statute and can be changed by the Legislature. The recommendation to eliminate four appellate judges and shift part of the savings to staff attorneys would save the State \$664,088 per year. The number of judges on the Court of Appeals also is set in statute, though the number of judges has never been decreased. Eliminating these positions by attrition also would delay any savings until at least FY 2008-09.